

Table of Contents

Volume 1

CHAPTER 1. LAWS AND REGULATIONS GOVERNING FIDUCIARIES

- § 1:1 Introduction
- § 1:2 Regulation 9
- § 1:3 Regulation 12
- § 1:4 Federal securities laws—In general
- § 1:5 —Glass-Steagall Act
- § 1:6 —Securities Act of 1933
- § 1:7 —Securities Exchange Act of 1934
- § 1:8 —Investment Company Act of 1940
- § 1:9 —Investment Advisers Act
- § 1:10 —Trust Indenture Act of 1939
- § 1:11 Employee Retirement Income Security Act of 1974
- § 1:12 Bank secrecy and USA Patriot Act
- § 1:13 Fair Credit Reporting Act and “Red Flag Rules”
- § 1:14 The Sarbanes-Oxley Act of 2002
- § 1:15 Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA)
- § 1:16 The Gramm-Leach-Bliley Act
- § 1:17 The Dodd-Frank Wall Street Reform and Consumer Protection Act

CHAPTER 2. FIDUCIARY RELATIONSHIPS AND DUTIES

- § 2:1 Introduction
- § 2:2 Agents/Principals
- § 2:3 Trustees/Beneficiaries
- § 2:4 Personal representatives, executors and administrators/beneficiaries
- § 2:5 Guardians/Wards
- § 2:6 Attorneys-in-fact/Grantors of power of attorney
- § 2:7 Attorneys at law/Clients and courts

- § 2:8 Accountants/Clients and third parties
- § 2:9 Trustees in bankruptcy/Creditors
- § 2:10 Corporate directors, officers and controlling
shareholders/Corporations and stockholders
- § 2:11 —Duty of care
- § 2:12 —Business judgment rule
- § 2:13 —Statutory modifications
- § 2:14 —Duty of loyalty
- § 2:15 — —Self-Dealing
- § 2:16 — —Executive compensation
- § 2:17 — —Corporate opportunity doctrine
- § 2:18 — —Sale of control
- § 2:19 — —Other duties of controlling shareholders

CHAPTER 3. FIDUCIARY LIABILITY.....

- § 3:1 Introduction
- § 3:2 Conflicts of interest
- § 3:3 Administering business interests
- § 3:4 Lending
- § 3:5 Holding shares of fiduciary bank's own stock
- § 3:6 Investment of income cash
- § 3:7 Estate planning
- § 3:8 Failure to communicate
- § 3:9 Operational liability
- § 3:10 Duties involving unclaimed property
- § 3:11 Class action administration
- § 3:12 Fee challenges
- § 3:13 Failure to diversify
- § 3:14 Bank examination reports
- § 3:15 ERISA
- § 3:16 —Administration of employee stock purchase
plans
- § 3:17 Duties with respect to life insurance
- § 3:18 —Policy performance
- § 3:19 —Vendor selection
- § 3:20 —Exchanging policies
- § 3:21 Life settlements
- § 3:22 Violations of securities laws
- § 3:23 —Failure to supervise
- § 3:24 —Failure to maintain records
- § 3:25 —Conversion of assets

TABLE OF CONTENTS

§ 3:26	—Improper trade allocations
§ 3:27	—False advertising
§ 3:28	—Providing misleading performance
§ 3:29	—Failure to obtain best execution
§ 3:30	Environmental liability
§ 3:31	Personal liability of fiduciaries
§ 3:32	Scope of the attorney-client privilege
§ 3:33	Liability of corporate trustees
§ 3:34	Liability for administering asset protection trusts
§ 3:35	Powers of attorney
§ 3:36	Removal of trustee

CHAPTER 4. REGULATION OF BANKS’ FIDUCIARY ACTIVITIES

I. REGULATORY FRAMEWORK

§ 4:1	In general
-------	------------

II. NATIONAL BANK ACT

§ 4:2	Authority of Comptroller of the Currency
§ 4:3	Granting trust powers
§ 4:4	Surrender of fiduciary powers
§ 4:5	Revocation of trust powers
§ 4:6	Segregation of fiduciary assets
§ 4:7	Prohibition from issuing checks
§ 4:8	Funds awaiting investment and distribution
§ 4:9	Loans of trust funds

III. REGULATION 9

§ 4:10	Overview
§ 4:11	Definitions
§ 4:12	Policies and procedures
§ 4:13	Review of fiduciary accounts
§ 4:14	Multi-state fiduciary operations
§ 4:15	Books and accounts
§ 4:16	Audit of trust department
§ 4:17	Funds awaiting investment or distribution
§ 4:18	Investment of funds held as fiduciary
§ 4:19	Self-dealing
§ 4:20	Deposit of securities

- § 4:21 Custody of investment funds
- § 4:22 Fiduciary compensation
- § 4:23 Receivership
- § 4:24 Surrender of fiduciary powers
- § 4:25 Collective investment funds
- § 4:26 Transfer agents

IV. FIDUCIARY POWERS OF THRIFTS

- § 4:27 Introduction
- § 4:28 Part 550 fiduciary powers
- § 4:29 Part 563e community reinvestment

V. REGISTRATION OF BANK SECURITIES

- § 4:30 Introduction
- § 4:31 Mutual funds
- § 4:32 Investment adviser registration
- § 4:33 Broker registration

CHAPTER 5. INVESTMENT MANAGERS AND ADVISERS: THE INVESTMENT ADVISERS ACT OF 1940

- § 5:1 Introduction
- § 5:2 Who is investment adviser—Statutory definition
- § 5:3 — —Compensation
- § 5:4 — —“In the business”
- § 5:5 — —Advice or analyses concerning securities
- § 5:6 — —Securities
- § 5:7 — —Exclusions
- § 5:8 — —Exemptions
- § 5:9 Advisers Act requirements, adviser qualifications
and fiduciary duty
- § 5:10 —Duty to supervise
- § 5:11 Registration
- § 5:12 Personal securities transactions and code of ethics
- § 5:13 Prohibited transactions—In general
- § 5:14 —Misstatements or omissions
- § 5:15 —Fraudulent conduct
- § 5:16 —Possession of client assets
- § 5:17 —Insider trading
- § 5:18 Disclosures—Financial
- § 5:19 —Disciplinary

TABLE OF CONTENTS

§ 5:20	—Brochure rule
§ 5:21	Advertising—In general
§ 5:22	—Performance advertising
§ 5:23	—Prohibitions
§ 5:24	Investment advisory contracts—In general
§ 5:25	—Fees
§ 5:26	—Referral fees for solicitors
§ 5:27	Recordkeeping requirements
§ 5:28	Disciplinary action—Penalties
§ 5:29	—Restricting adviser activity
§ 5:30	—Cease and desist order
§ 5:31	—Civil penalties
§ 5:32	—Criminal penalties
§ 5:33	—NSMIA preemption of state regulation

CHAPTER 6. REGULATION OF BROKER-DEALERS

§ 6:1	Broker-dealer regulatory structure
§ 6:2	Who must register
§ 6:3	—“Securities” which trigger registration requirements
§ 6:4	—What constitutes broker-dealer “engaged in the business”
§ 6:5	—Associated persons of issuer
§ 6:6	—Finders
§ 6:7	—Investment advisers
§ 6:8	—Financial consultants
§ 6:9	—Ministerial services
§ 6:10	—Marketing of securities by insurance agencies through associated broker-dealers
§ 6:11	—Banks
§ 6:12	Exemptions from registration
§ 6:13	Consequences of registration
§ 6:14	Registration process
§ 6:15	Regulation under Securities Act of 1933
§ 6:16	Obligations related to municipal securities’ offerings
§ 6:17	Regulation of government securities dealers
§ 6:18	Brokers’ breach of fiduciary duties and responsibilities under anti-fraud rules
§ 6:19	—Shingle theory
§ 6:20	—Fiduciary theory

- § 6:21 —Boiler room operations
- § 6:22 —Scalping
- § 6:23 —Market manipulation
- § 6:24 —Unauthorized trading
- § 6:25 —Churning
- § 6:26 —Margin rules
- § 6:27 —Inside information
- § 6:28 Multiservice brokerage firms and Chinese Walls
- § 6:29 Extension of credit to customers
- § 6:30 Arbitration
- § 6:31 The National Securities Markets Improvements Act
- § 6:32 Money laundering

CHAPTER 7. REGULATION OF INSURANCE COMPANIES

I. GENERALLY

- § 7:1 Introduction
- § 7:2 Background/Historical perspective
- § 7:3 —Insurance in United States
- § 7:4 Federal regulation of insurance
- § 7:5 National Association of Insurance Commissioners

II. FINANCIAL REQUIREMENTS

- § 7:6 Generally
- § 7:7 Accreditation
- § 7:8 —Standards

III. STATE REGULATION

- § 7:9 Generally
- § 7:10 Rate regulation
- § 7:11 —Discrimination
- § 7:12 Unfair competition regulation
- § 7:13 Other state statutes

IV. STATE INSURANCE DEPARTMENTS

- § 7:14 Generally
- § 7:15 Licensing
- § 7:16 Rates

TABLE OF CONTENTS

- § 7:17 Financial statement analysis—IRIS
- § 7:18 Onsite field examinations
- § 7:19 Policy review

V. FEDERAL LAWS REGULATING INSURANCE

- § 7:20 Generally
- § 7:21 Antitrust laws
- § 7:22 Internal Revenue Code
- § 7:23 Employee Retirement Income Security Act of 1974
- § 7:24 —Preemption, savings clause and deemer clause
- § 7:25 —Who is a fiduciary
- § 7:26 —Fiduciary responsibilities
- § 7:27 —Prohibited transactions
- § 7:28 SEC regulation

VI. LIFE INSURANCE PRODUCTS

- § 7:29 Generally
- § 7:30 Whole life
- § 7:31 Term life
- § 7:32 Endowment contracts
- § 7:33 Universal life insurance
- § 7:34 Group insurance
- § 7:35 Annuities
- § 7:36 —Flexible premium deferred annuities
- § 7:37 —Single premium deferred annuities
- § 7:38 —Joint and survivor annuities
- § 7:39 —Variable annuities

VII. PENSION PRODUCTS

- § 7:40 General accounts, separate accounts and subsidiaries
- § 7:41 Deposit administration contract
- § 7:42 Immediate participation guarantee
- § 7:43 Guaranteed investment contracts

CHAPTER 8. PRIVACY

- § 8:1 Introduction
- § 8:2 Definitions of parties
- § 8:3 Requirements for proper disclosure
- § 8:4 Prohibited disclosures

- § 8:5 Consumers' right to opt out
- § 8:6 Service or products exception
- § 8:7 Prohibition of false or fraudulent acts relating to disclosure
- § 8:8 Other Acts relating to consumer privacy
- § 8:9 Protection of customer information

CHAPTER 9. THE SARBANES-OXLEY ACT OF 2002

- § 9:1 Title I: Public Company Accounting Oversight Board
- § 9:2 Title II: Auditor independence
- § 9:3 Title III: Corporate responsibility
- § 9:4 Title IV: Enhanced financial disclosures
- § 9:5 Title V: Analyst conflicts of interest
- § 9:6 Title VI: Commission resources and authority
- § 9:7 Title VII: Studies and reports
- § 9:8 Title VIII: Corporate and criminal fraud accountability
- § 9:9 Title IX: White-collar crime penalty enhancements
- § 9:10 Title X: Corporate tax returns
- § 9:11 Title XI: Corporate fraud accountability

CHAPTER 10. BANK SECRECY ACT AND ANTI-MONEY LAUNDERING LAWS..

- § 10:1 Customer identification programs
- § 10:2 Office of Foreign Assets Control
- § 10:3 High risk customers and enhanced due diligence
- § 10:4 Reporting suspicious activity
- § 10:5 Examination procedures and regulatory expectations
- § 10:6 Recent developments from FinCEN as to brokers-dealers and investment advisers

CHAPTER 11. PERSONAL TRUST SERVICES

I. JURISDICTION

- § 11:1 Introduction
- § 11:2 Estates and trusts

TABLE OF CONTENTS

- § 11:3 Real property
- § 11:4 Personal property
- § 11:5 Powers of appointment

II. AUTHORITY TO ACT

- § 11:6 Individual fiduciaries
- § 11:7 Corporate fiduciaries
- § 11:8 —State requirements

III. FIDUCIARY POWERS

- § 11:9 In general
- § 11:10 Incur expenses
- § 11:11 Sell property
- § 11:12 Lease land
- § 11:13 Make gifts of trust property
- § 11:14 Mortgage property
- § 11:15 Exercise powers of shareholder
- § 11:16 Delegate powers
- § 11:17 Hold shares of trustee's own stock

IV. FIDUCIARY DUTIES

- § 11:18 Loyalty
- § 11:19 Make funds productive
- § 11:20 Place deposits in bank's own banking department
- § 11:21 Keep property separate
- § 11:22 Render accounts and furnish information
- § 11:23 Exercise reasonable care and skill
- § 11:24 Secure and keep control of assets
- § 11:25 Preserve trust property
- § 11:26 Spendthrift trusts
- § 11:27 Uniform Principal and Income Act
- § 11:28 Power to adjust
- § 11:29 Conversion to a unitrust
- § 11:30 Enforce claims and defend actions
- § 11:31 Pay income to beneficiary
- § 11:32 Deal impartially with beneficiaries
- § 11:33 Life insurance policies held in trust
- § 11:34 —Terms of the governing instrument
- § 11:35 —The Prudent Investor Rule
- § 11:36 —Regulation 9

- § 11:37 —Case law
- § 11:38 —Reliance of agent selling policy
- § 11:39 —Delegation
- § 11:40 —Exchanging policies
- § 11:41 Multiple party accounts

V. MISCELLANEOUS

- § 11:42 Fiduciary compensation
- § 11:43 Allocation of income and principal
- § 11:44 Liability for breach of trust
- § 11:45 Liability for refusal to honor power of attorney

VI. UNIFORM TRUST CODE

- § 11:46 Introduction
- § 11:47 Purpose
- § 11:48 Mandatory rules
- § 11:49 Written trusts created in other jurisdictions
- § 11:50 Choice of law provisions
- § 11:51 Principal place of administration; situs of trust
- § 11:52 Notice requirements
- § 11:53 Virtual representation
- § 11:54 Creditors' rights
- § 11:55 Revocable trusts as will substitutes
- § 11:56 Trust amendment, termination, and modification
- § 11:57 Office of trustee
- § 11:58 Duties, powers, and liabilities of trustees

VII. SPECIAL NEEDS TRUSTS

- § 11:59 Introduction
- § 11:60 Public benefits
- § 11:61 Trust assets and eligibility determinations
- § 11:62 Trusts unavailable under OBRA 93 (payback and pooled)
- § 11:63 General requirements of OBRA 93 payback and pooled special needs trusts
- § 11:64 Third-party funded supplemental needs trusts
- § 11:65 Distribution requirements
- § 11:66 Trust drafting

TABLE OF CONTENTS

CHAPTER 12. CORPORATE TRUST SERVICES

I. TRUST INDENTURE ACT

A. IN GENERAL

- § 12:1 Introduction
- § 12:2 Purpose
- § 12:3 Coverage
- § 12:4 Indenture qualification

B. INDENTURE TRUSTEES

- § 12:5 Eligibility
- § 12:6 Conflicts of interest
- § 12:7 Trustee as creditor
- § 12:8 —Exclusions from preferential collection of claims
- § 12:9 Disclosure duties—Indenture trustees
- § 12:10 —Obligors
- § 12:11 Fiduciary duties—Predefault
- § 12:12 —Postdefault
- § 12:13 Liability—Misleading statements
- § 12:14 —Penalties
- § 12:15 Reliance on representations of others

II. AGENCY ROLES

- § 12:16 Paying agent
- § 12:17 Transfer agent
- § 12:18 Escrow agent
- § 12:19 Liability as escrow agent

III. MUNICIPAL INDENTURES

- § 12:20 Generally
- § 12:21 Trustee duties
- § 12:22 Regulation
- § 12:23 Taxation

CHAPTER 13. EMPLOYEE BENEFIT TRUST SERVICES

I. INTRODUCTION

- § 13:1 Generally

- § 13:2 ERISA coverage
- § 13:3 Plan assets
- § 13:4 Establishment of plan
- § 13:5 Establishment of trust
- § 13:6 Employee stock ownership plans

II. FIDUCIARIES

A. DEFINITION

- § 13:7 Generally
- § 13:8 Who are the fiduciaries—Overview
- § 13:9 —Named fiduciaries
- § 13:10 —Discretionary control over plan assets and management
- § 13:11 —Investment advisors
- § 13:12 —Plan administrators
- § 13:13 —Common fiduciaries
- § 13:14 Employers and unions
- § 13:15 Insurance companies
- § 13:16 Attorneys, accountants and actuaries
- § 13:17 Plan sponsor serving as plan administrator
- § 13:18 Investment managers
- § 13:19 —Trustee as fiduciary
- § 13:20 —Duties of a directed trustee

B. DUTIES

- § 13:21 Standards of conduct—Exclusive benefit rule
- § 13:22 —Prudent Man Rule
- § 13:23 —Diversification
- § 13:24 —Compliance with plan documents
- § 13:25 Allocation of fiduciary duties
- § 13:26 Proxy voting
- § 13:27 Responsibilities of retirement plan fiduciaries

III. PROHIBITED TRANSACTIONS

- § 13:28 Generally
- § 13:29 Employer securities
- § 13:30 Exemptions generally
- § 13:31 Statutory exemptions—Participant loans
- § 13:32 —Necessary services
- § 13:33 —Employee stock ownership plan loans

TABLE OF CONTENTS

§ 13:34	—Bank deposits
§ 13:35	—Insurance products
§ 13:36	—Bank ancillary services
§ 13:37	—Collective trust funds
§ 13:38	Administrative exemptions
§ 13:39	—Investment in open end mutual funds (PTE 77-4)
§ 13:40	—Interest-free loans between plans and parties in interest (PTE 80-26)
§ 13:41	—Bank collective investment funds and parties in interest (PTE 80-51)
§ 13:42	—Lending of securities (PTE 81-6)
§ 13:43	—Short-term investments (PTE 81-8)
§ 13:44	—Qualified Professional Asset Managers (PTE 84-14)
§ 13:45	—In-house asset managers (PTE 96-23)
§ 13:46	—Purchase and sale of foreign currencies (PTE 94-20)
§ 13:47	Asset allocation arrangements
§ 13:48	12b-1 fees

IV. LIABILITY, INSURANCE AND BONDING

§ 13:49	Breach of fiduciary duties
§ 13:50	Breach by co-fiduciary
§ 13:51	Prohibited persons holding positions
§ 13:52	Exculpatory provisions and insurance
§ 13:53	Bonding
§ 13:54	Responsibilities of retirement plan fiduciaries
§ 13:55	—Defined contribution plans
§ 13:56	Fiduciary responsibilities regarding investment options
§ 13:57	—Qualified default investment alternatives
§ 13:58	—Content of notice
§ 13:59	—Fees
§ 13:60	— —DOL regulations

CHAPTER 14. PRUDENT INVESTOR RULE.....

I. UNIFORM PRUDENT INVESTOR RULE

§ 14:1	Prudent investor rule—Overview
--------	--------------------------------

- § 14:2 —Prudent administration
- § 14:3 —Diversification
- § 14:4 —Diversification standards
- § 14:5 —Delegation
- § 14:6 —Delegation standard
- § 14:7 Investment policy statement
- § 14:8 Prudent investor rule—Results from delegation

II. PRUDENT MAN STANDARD: HISTORY AND DEVELOPMENT

- § 14:9 Introduction
- § 14:10 Restatement second, trusts investment standards
- § 14:11 Elements of standard—Requirement of care
- § 14:12 —Requirement of skill
- § 14:13 —Requirement of caution
- § 14:14 —Diversification
- § 14:15 Trustee's liability—Acts of agents
- § 14:16 —Criticisms and shortcomings

III. PRUDENT INVESTOR STANDARD RESTATEMENT (THIRD) OF TRUSTS

A. MODERN PORTFOLIO THEORY

- § 14:17 Generally
- § 14:18 Portfolio risks
- § 14:19 —How risk affects the model

B. PRUDENT INVESTOR RULE

- § 14:20 Generally
- § 14:21 Departures from Restatement Second, Trusts—
Trust purpose and circumstances
- § 14:22 —Total portfolio emphasis
- § 14:23 Departures from Restatement Second of
Trusts—Diversification
- § 14:24 Departures from Restatement Second, Trusts—
Impartiality
- § 14:25 —Delegation of powers
- § 14:26 —Investments at inception
- § 14:27 —Cost control
- § 14:28 Summary

TABLE OF CONTENTS

IV. ERISA INVESTMENT REQUIREMENTS

A. INVESTMENT RESPONSIBILITIES

- § 14:29 Generally
- § 14:30 Exclusive benefit rule
- § 14:31 Prudent Man Rule
- § 14:32 Diversification
- § 14:33 Governing documents
- § 14:34 Indicia of ownership

B. PARTICIPANT DIRECTED INVESTMENTS

- § 14:35 Section 404(c) safe harbor
- § 14:36 Use of pooled investment vehicles
- § 14:37 Investment Company Act of 1940 study
- § 14:38 Participant education versus investment advice

CHAPTER 15. SECURITIES ACTIVITIES AND INSURANCE OF FIDUCIARIES

I. HISTORICAL BACKGROUND

- § 15:1 Glass Steagall Act
- § 15:2 Commingling agencies
- § 15:3 Discount brokerage
- § 15:4 Common and collective trust funds
- § 15:5 Closed-end investment company services by
affiliates
- § 15:6 Commercial paper
- § 15:7 IRA funds
- § 15:8 Securitization of assets
- § 15:9 Asset allocation programs
- § 15:10 Bank brokerage activities

II. INSURANCE AND ANNUITY PRODUCTS

- § 15:11 In general
- § 15:12 Bank insurance
- § 15:13 Annuity products

III. SECURITIES EXCHANGE ACT OF 1934

- § 15:14 Derivatives

- § 15:15 “Soft dollars”
- § 15:16 Regulation R
- § 15:17 Networking
- § 15:18 Trust and fiduciary activities
- § 15:19 Sweep accounts and transactions in money
market funds
- § 15:20 Safekeeping and custody
- § 15:21 Regulation S transactions with non-U.S. persons
and broker-dealers
- § 15:22 Other exemptions

IV. SECURITIES ACT OF 1933

- § 15:23 Registration exemptions
- § 15:24 Insider information
- § 15:25 Insider short-swing profits

CHAPTER 16. BANK COMMON AND COLLECTIVE TRUST FUNDS (REGULATION 9.18).....

I. GENERALLY

- § 16:1 Introduction
- § 16:2 Historical background of common trust funds
- § 16:3 Types of collective investment funds

II. REQUIREMENTS GOVERNING COMMON AND COLLECTIVE TRUST FUNDS

- § 16:4 Written plan
- § 16:5 Fund management
- § 16:6 Proportionate interests
- § 16:7 Method of valuation
- § 16:8 Admissions and withdrawals
- § 16:9 Audits
- § 16:10 Financial reports
- § 16:11 Advertising restrictions
- § 16:12 Self-dealing and conflicts
- § 16:13 Management fees
- § 16:14 Expenses
- § 16:15 Certificates
- § 16:16 Good faith mistakes

TABLE OF CONTENTS

III. OTHER COLLECTIVE FUNDS

- § 16:17 Single loan or obligation
- § 16:18 Mini-funds
- § 16:19 Other authorized funds
- § 16:20 Trust funds of corporations
- § 16:21 Prior approval funds

IV. STATUTES AND PROVISIONS IMPACTING COMMON AND COLLECTIVE TRUST FUNDS

- § 16:22 Tax implications
- § 16:23 ERISA prohibited transaction exemption
- § 16:24 Governmental plans
- § 16:25 Securities law exemptions—Common trust funds
- § 16:26 —Collective trust funds
- § 16:27 Individual retirement accounts
- § 16:28 Merging common and collective funds

CHAPTER 17. MUTUAL FUNDS.....

I. IN GENERAL

- § 17:1 Definition of investment company
- § 17:2 Organization of mutual fund

II. STRUCTURE OF MUTUAL FUND ORGANIZATION

- § 17:3 Generally
- § 17:4 —Director/trustee
- § 17:5 —Investment adviser
- § 17:6 —Administrator
- § 17:7 —Distributor/underwriter
- § 17:8 —Initial shareholder
- § 17:9 —Officers
- § 17:10 —Custodian
- § 17:11 —Transfer agent
- § 17:12 —Fund counsel, auditor and accountant

III. REGULATORY SCHEME

- § 17:13 Securities Act of 1933

- § 17:14 Securities Exchange Act of 1934
- § 17:15 Investment Advisers Act of 1940
- § 17:16 Investment Company Act of 1940
- § 17:17 Glass-Steagall Act
- § 17:18 Internal Revenue Code

IV. REGULATORS OF MUTUAL FUNDS

- § 17:19 Securities Exchange Commission
- § 17:20 National Association of Securities Dealers, Inc
- § 17:21 Commodity Futures Trading Commission
- § 17:22 Internal Revenue Service
- § 17:23 Federal Reserve Board
- § 17:24 Comptroller of the Currency
- § 17:25 Federal Deposit Insurance Corporation

V. MUTUAL FUND ARRANGEMENTS

- § 17:26 Series funds
- § 17:27 Proprietary and private label funds
- § 17:28 Fee arrangements
- § 17:29 Affiliate transactions
- § 17:30 Bank sales practices
- § 17:31 Converting bank pooled investment funds into mutual funds
- § 17:32 —Common trust funds
- § 17:33 —Collective trust funds
- § 17:34 SEC responses to mutual fund abuses
- § 17:35 Bank compliance programs

CHAPTER 18. AUDIT AND COMPLIANCE.....

I. RESPONSIBILITIES OF BOARD OF DIRECTORS

- § 18:1 Introduction
- § 18:2 Risk management in general
- § 18:3 Compliance as a component of risk management
- § 18:4 Laws and regulations posing compliance risk to fiduciaries
- § 18:5 Duties and responsibilities of the board
- § 18:6 Federal Deposit Insurance Corporation

TABLE OF CONTENTS

- § 18:7 Federal deposit insurance corporation—
Managerial compensation
- § 18:8 Standards of liability
- § 18:9 Civil money penalties
- § 18:10 Criminal penalties
- § 18:11 Freezing assets
- § 18:12 Insurance and indemnification
- § 18:13 Regulation 9
- § 18:14 Establishing compliance programs
- § 18:15 Importance of compliance management
programs

II. ELEMENTS OF EFFECTIVE TRUST COMPLIANCE MANAGEMENT SYSTEM

- § 18:16 Strong management commitment
- § 18:17 Formalized program co-ordinated by a
compliance officer
- § 18:18 Communication
- § 18:19 Training
- § 18:20 Responsibility and accountability of
management
- § 18:21 Reporting

III. RESPONSIBILITIES OF TRUST COMPLIANCE MANAGEMENT DEPARTMENT OR OFFICER

- § 18:22 In general
- § 18:23 In-depth understanding of laws and regulations
as well as products and services offered
- § 18:24 Ability to monitor for changes in laws and
regulations
- § 18:25 Timely implementation and review of policies
and procedures
- § 18:26 Establish and manage monitoring mechanisms
- § 18:27 Provide training and education on regulatory
issues
- § 18:28 Liaison to auditors and regulatory examiners

IV. STEPS TOWARD PREVENTION AND AVOIDANCE OF LIABILITY

- § 18:29 Engage knowledgeable people

REGULATION INVEST MGMT & FIDUCIARY SERV

- § 18:30 Establish strong risk management capabilities within an effective compliance management program
- § 18:31 Policies and procedures
- § 18:32 Audits
- § 18:33 Engage experienced counsel
- § 18:34 Review fees and incentives
- § 18:35 Communicate and disclose
- § 18:36 Review sales literature
- § 18:37 Document compliance efforts
- § 18:38 Conduct suitability reviews
- § 18:39 Resolve customer complaints
- § 18:40 Physically separate products and services
- § 18:41 Address turnover issues
- § 18:42 Trust rating system
- § 18:43 Individual component ratings
- § 18:44 Codes of conduct and ethics policies
- § 18:45 SEC Inspections

CHAPTER 19. FOREIGN FIDUCIARY ACTIVITIES

- § 19:1 Foreign exchange
- § 19:2 Basic statutory framework
- § 19:3 Regulation Y
- § 19:4 International securities activities
- § 19:5 The Hague Convention on Trusts
- § 19:6 Offshore trusts
- § 19:7 Broker-dealer registration requirements
- § 19:8 Obligations under Investment Advisers Act
- § 19:9 Registration and reporting requirements for foreign issuers
- § 19:10 Extraterritorial application of antifraud provisions
- § 19:11 Foreign trust tax compliance rules

CHAPTER 20. ENVIRONMENTAL LIABILITY

- § 20:1 Introduction and overview
- § 20:2 Bank trust departments
- § 20:3 Lenders or corporate trustees
- § 20:4 —United States v. Mirabile
- § 20:5 —United States v. Maryland Bank and Trust Company

TABLE OF CONTENTS

§ 20:6	—United States v. Fleet Factors Corporation
§ 20:7	—Guidice v. BFG Electroplating and Manufacturing Company
§ 20:8	Personal trustees
§ 20:9	Defenses—In General
§ 20:10	—Security interest defense
§ 20:11	EPA rule and legislation
§ 20:12	—Effect of 1996 CERCLA amendments and state laws
§ 20:13	Minimizing risk

CHAPTER 21. REGULATORY REPORTING REQUIREMENTS

I. GENERAL REGULATORY REPORTING

§ 21:1	Introduction
§ 21:2	Annual reports—Trust assets
§ 21:3	<i>[Reserved]</i>
§ 21:4	Annual reports—International fiduciary activities
§ 21:5	—Report of Assets and Liabilities—Components
§ 21:6	Special report on fiduciary activities
§ 21:7	—Components
§ 21:8	Corporate trust activities report under Trust Indenture Act
§ 21:9	Foreign trust tax compliance rules

II. SECURITIES INFORMATION CENTER

§ 21:10	Lost and Stolen Securities Program
§ 21:11	Registration as direct or indirect inquirer
§ 21:12	Form X-17F-1A
§ 21:13	—Inquiries

III. SECURITIES AND EXCHANGE COMMISSION

§ 21:14	Schedules 13D and 13G
§ 21:15	—Schedule 13D
§ 21:16	—Schedule 13G
§ 21:17	Forms—13F
§ 21:18	—Contents
§ 21:19	—144
§ 21:20	Mandated electronic filings and exceptions

REGULATION INVEST MGMT & FIDUCIARY SERV

- § 21:21 Insider transactions reporting
- § 21:22 —Forms
- § 21:23 Rule 13h-1 (Reproposed)
- § 21:24 *[Reserved]*

IV. TRANSFER AGENCY REPORTS

- § 21:25 Form TA-1
- § 21:26 Form TA-2
- § 21:27 Form TA-W
- § 21:28 Notice of noncompliance with registered transfer agency turnaround requirements

V. MISCELLANEOUS OWNERSHIP REPORTS

- § 21:29 Civil Aeronautics Board
- § 21:30 Department of Transportation, Maritime Administration
- § 21:31 Federal Communications Commission
- § 21:32 Public Utility Holding Act
- § 21:33 Small Business Investment Act
- § 21:34 Concurrent ownership of carriers
- § 21:35 Foreign Investment in Real Property Tax Act
- § 21:36 Agricultural Foreign Investment Disclosure Act
- § 21:37 Mineral Lands Leasing Act
- § 21:38 Direct and indirect foreign investments

CHAPTER 22. DODD-FRANK ACT: SUMMARY OF PROVISIONS AFFECTING FIDUCIARY SERVICE PROVIDERS..

I. IN GENERAL

- § 22:1 Introduction
- § 22:2 Effective date

II. FINANCIAL STABILITY

- § 22:3 Financial Stability Oversight Council
- § 22:4 Office of Financial Research
- § 22:5 Additional restrictions

III. ORDERLY LIQUIDATION OF FAILING FINANCIAL INSTITUTIONS

- § 22:6 Authority of FDIC as liquidating receiver; bankruptcy alternatives

TABLE OF CONTENTS

§ 22:7 Liquidation procedures

**IV. TRANSFER OF POWERS TO THE
COMPTROLLER OF THE CURRENCY, THE
CORPORATION AND THE BOARD OF
GOVERNORS**

§ 22:8 Elimination of the Office of Thrift Supervision

§ 22:9 Assessments for deposit insurance and other
changes

**V. REGULATION OF ADVISERS TO HEDGE
FUNDS AND OTHERS**

§ 22:10 Registration as investment advisers

§ 22:11 Exemptions from SEC Registration

§ 22:12 —Smaller private fund advisers

§ 22:13 —Venture capital fund advisers

§ 22:14 —Foreign private advisers

§ 22:15 —Other exemptions

§ 22:16 Custody of client assets

§ 22:17 Accredited investors

§ 22:18 Studies and reports

VI. INSURANCE

§ 22:19 Federal insurance office

§ 22:20 Insurance regulation by states

**VII. IMPROVEMENTS TO REGULATION OF
BANK AND SAVINGS ASSOCIATION
HOLDING COMPANIES AND DEPOSITORY
INSTITUTIONS**

§ 22:21 Studies and restrictions

§ 22:22 Proprietary trading and hedge fund investments

**VIII. WALL STREET TRANSPARENCY AND
ACCOUNTABILITY**

§ 22:23 Regulation of swaps markets

§ 22:24 Types of swaps defined and distinguished

IX. PAYMENT, CLEARING AND SETTLEMENT SUPERVISION

- § 22:25 Supervision of payment, clearing and settlement functions
- § 22:26 Regulation of financial market utilities of systemic importance
- § 22:27 Federal Reserve support

X. INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

- § 22:28 General regulatory enhancements
- § 22:29 Credit rating agencies
- § 22:30 Securitization
- § 22:31 Corporate governance and internal controls
- § 22:32 Municipal securities and advisers
- § 22:33 Miscellaneous Title IX provisions

XI. OTHER PROVISIONS

- § 22:34 Establishing the Bureau of Consumer Financial Protection
- § 22:35 Federal reserve requirements
- § 22:36 Improved access for low and moderate income individuals
- § 22:37 Deficit reduction under Pay it Back Act
- § 22:38 Requirements for mortgage originators and mortgage lenders
- § 22:39 Taxation of gains from derivatives contracts
- § 22:40 Miscellaneous provisions

Table of Laws and Rules

Table of Cases

Index

Volume 2

APPENDICES 1 STATUTES

Appendix 1A. Securities Act of 1933 (15 U.S.C.A.
§§ 77a-77aa)

TABLE OF CONTENTS

.....	3
Appendix 1B. Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a-78oo)	103
Appendix 1C. Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1 to 80b-21)	649
Appendix 1D. Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1 to 80a-64)	703
Appendix 1E. Trust Indenture Act of 1939 (15 U.S.C.A. §§ 77aaa-77bbbb)	871
Appendix 1F. Trust Powers (12 U.S.C.A. § 92a)	921
Appendix 1G. McCarran-Ferguson Act (15 U.S.C.A. §§ 1011-1015)	927

APPENDICES 2 REGULATIONS

Appendix 2A. Regulation 9 (12 CFR § 9)	933
Appendix 2A.5. Revised Regulation 9 (12 CFR § 9.1)	955
Appendix 2B. Precedents & Opinions	983
Appendix 2C. Regulation 12 (12 CFR § 12)	1065

APPENDICES 3 ERISA

Appendix 3A. ERISA—Title I (29 U.S.C.A. §§ 1001-1500)	1083
Appendix 3B. Key Prohibited Transaction Exemptions	1823
Appendix 3C. 26 U.S.C.A. § 4975	1833

APPENDICES 4 UNIFORM ACTS

Appendix 4A. Selections From Uniform Probate Code (8 ULA §§ 1-101 et seq.)	1865
--	------

REGULATION INVEST MGMT & FIDUCIARY SERV

Appendix 4B.	Uniform Prudent Investor Act of 1994	1917
Appendix 4C.	Uniform Trust Code of 2000	1923

APPENDICES 5 SAMPLE FORMS

Appendix 5A.	SEC Form ADV	1975
Appendix 5B.	SEC Form BD	1989
Appendix 5C.	Form 5500	2017
Appendix 5D.	Revisions to Form ADV Related to Adopted Rule Release IA-4509	2021
Appendix 5E.	Form CRS	2105

APPENDICES 6 FIDUCIARY REPORTS

Appendix 6A.	Annual Report of Trust Assets	2125
Appendix 6B.	Special Report—Fiduciary Activities	2157
Appendix 6C.	Report of Assets and Liabilities of US Branches and Agencies of Foreign Banks	2167
Appendix 6D.	SIC Registration Form—Lost & Stolen Securities Program	2199
Appendix 6E.	SIC Form X-17F-1A	2203
Appendix 6F.	SIC Agreement Form for Indirect and Direct Inquiries	2207
Appendix 6G.	SEC Form 13F	2209
Appendix 6H.	SEC Schedule 13D	2221
Appendix 6I.	SEC Schedule 13G	2229

TABLE OF CONTENTS

Appendix 6J.	SEC Form 144	2235
Appendix 6K.	SEC Form 3	2237
Appendix 6L.	SEC Form 4	2243
Appendix 6M.	SEC Form 5	2249
Appendix 6N.	SEC Rule 13-H	2257
Appendix 6O.	SEC Form T-1	2271
Appendix 6P.	SEC Form TA-1	2279
Appendix 6Q.	SEC Form TA-2	2303
Appendix 6R.	SEC Form TA-W	2319
Appendix 6S.	Maritime Administration Form MA-579	2331
Appendix 6T.	FCC Form 323	2335
Appendix 6U.	SEC Form U-3A3-1	2363

APPENDICES 7 BANKING SERVICES

Appendix 7A.	Permissible Banking Services	2369
Appendix 7B.	Bank Retail Services	2389

APPENDICES 8 DEPARTMENT OF LABOR INVESTIGATION

Appendix 8A.	How To Prepare for a Department of Labor Investigation	2393
--------------	--	------

APPENDICES 9 STATE LAWS INVOLVING NONRESIDENT FIDUCIARIES

Appendix 9A.	Selected State Statutes Governing	
--------------	-----------------------------------	--

REGULATION INVEST MGMT & FIDUCIARY SERV

	Nonresident Fiduciaries	2407
Appendix 9B.	Types of Nonresident Fiduciary Laws	2409

APPENDICES 10 COMPLIANCE POLICIES

Appendix 10A.	Sample Compliance Management Policy	2413
Appendix 10B.	Fiduciary Policies Recommended by the Office of the Comptroller of the Currency—Midwest District	2415
Appendix 10C.	Sample Risk Management Process	2419